

bee; but the plaintiff contended that the case came within clause (e) of Con. Rule 162.

I. F. Hellmuth, K.C., for the plaintiff.

W. Nesbitt, K.C., for the defendant.

BOYD, C. (after setting out the facts relating to the transactions from which the alleged cause of action arose):—On the 19th June, 1906, at Ottawa, the defendant, while acting under the authority of the Qu'Appelle Company, and also acting on behalf of the plaintiff, as joint owner in the purchase of the said lands (i.e., lands which the Qu'Appelle Company, under a concession from the Dominion Government, had a right to select from a certain area of public lands in Saskatchewan, from which the Canadian Northern Railway Company had also a right to select lands), assumed to release the Government from all claims to any lands selected by the Canadian Northern Railway Company, whether made before or after the 31st December, 1905. This renunciation is contained in a letter to the Minister of the Interior, signed by the defendant on the 19th June. The Government acted upon this letter and directed the issue of letters patent to the Canadian Northern Railway Company for 157,000 acres which had been selected by that company after the 31st December, 1905, and before the 20th June, 1906, although 126,000 acres of these had before been duly selected on behalf of the Qu'Appelle Company and the parties to this action.

The plaintiff's cause of complaint is that the defendant was corruptly influenced to sign the said renunciation or surrender, and received therefor money or valuable consideration, for which he should account to his co-purchaser, and also, if need be, that he should pay damages for the loss of the more valuable lands so obtained by the rival company.

For the purpose of this litigation, it is not material to consider the precise legal relationship between the parties: they were joint purchasers, and, when the transaction complained of was entered upon and engaged in, the defendant was placed in a position of confidence quoad the plaintiff. He was trusted to negotiate a certain compromise faithfully, instead of which (as alleged) he grossly violated the trust reposed in him. This particular transaction, growing out of the original engagement of joint-purchase, is plainly separable from the general joint relationship. This was a matter originated at the conference held at Toronto on the 22nd May, 1906, in the prosecution of